



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Paulsen Construction Company

File: B-231393

Date: September 13, 1988

DIGEST

1. Where the invitation required bidders to propose a "practicable" construction period to be used to determine the lowest evaluated cost to the government, the agency properly did not accept the protester's fifth-low bid, which was low under the solicitation's evaluation scheme, because the agency reasonably determined that the protester's proposed construction period was not "practicable" and the bid therefore did not in fact represent the lowest total cost to the government.

2. Where the agency properly determined that the protester's bid did not represent the lowest evaluated total cost to the government and there are several other eligible bidders whose total bid prices are lower than the protester's, the protester is not an interested party to protest that the awardee's bid was nonresponsive.

DECISION

Paulsen Construction Company protests award of a contract to Layton Construction Company by the Corps of Engineers pursuant to invitation for bids (IFB) No. DACA05-88-B-0065. Paulsen contends that it submitted the lowest evaluated price under the IFB's evaluation scheme but that the contracting officer improperly rejected Paulsen's bid as unbalanced. Paulsen also contends that Layton's bid was nonresponsive because Layton failed to enter bid prices for all items in the bid schedule. We deny the protest in part and dismiss it in part.

Issued on March 2, 1988, the IFB solicited bids to build a two-story addition to an existing structure for use as an avionics support facility at Hill Air Force Base, Utah. In addition to the building, the contractor would provide an intrusion detection system and site work (including utilities, asphalt paving, concrete walks and landscaping)

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as part of the basic contract. Bids were also to include a price for an option item for removing and replacing an estimated 5000 cubic yards of unstable material.

For evaluation purposes, the IFB contained a formula that added certain cost factors (representing interest, liquidated damages, and overhead) to each bid's total contract price to calculate an evaluated cost total. The IFB required a bidder to state the shortest "practicable" period it would take to complete the entire contract, including the optional work if required. The evaluated cost total would be computed according to the IFB formula based upon the total bid price, the offered performance period, and the IFB's evaluation factors. Even though the amount of the contract would be fixed at the prices bid, the award was to be made to the responsive, responsible bidder whose evaluated cost total was the lowest.

Twelve bids were received by the April 12 closing date. Layton's bid, at a total price of \$9,132,000, was the lowest, while Paulsen's bid of \$9,421,797 was the fifth-low bid. However, when the evaluation formula was applied, Paulsen's evaluated cost total of \$10,092,197 was the lowest and Layton's evaluated cost total of \$10,505,263 was second-low. The reason Paulsen's bid was evaluated as lower was consideration of the offered performance period: Paulsen stated that it would complete the project in 210 days, while Layton stated a performance period of 450 days.

As the Corps' estimate for performance was 540 days, and the other bids offered performance periods ranging from 315 days to 700 days, the contracting officer had serious doubts as to whether Paulsen could complete performance in the 210 days promised, and whether Paulsen's bid would really result in the lowest cost to the government. Ultimately, the contracting officer determined that the construction time promised by Paulsen was not practicable. On May 6, the contracting officer rejected Paulsen's bid, stating:

"Since the project cannot be completed in [210 days], the Government would be paying more for the project without getting the benefit of any time savings.

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"Clearly then, your bid is unbalanced since the proposed construction time is unreasonable and directly affects the cost of the project and negates any benefits to the Government."

The contracting officer awarded the contract to Layton on that date, and Paulsen protested to our Office by letter of May 10.

Paulsen objects to the contracting officer's characterization of its bid as unbalanced and its proposed construction timetable as unreasonable. Furthermore, Paulsen takes umbrage at the Corps' subsequent statement in its report to our Office on the protest that Paulsen is not responsible because Paulsen "could not possibly complete this construction project within the 210 day period specified in its bid." In sum, Paulsen argues that it is entitled to the award because its evaluated cost total was the lowest under the IFB's formula and that the contracting officer had no basis for rejecting Paulsen's bid.

As discussed below, we find that the Corps reasonably determined that the performance period proposed by Paulsen was impracticable, and that the evaluation therefore was artificially skewed in the firm's favor. In our opinion, therefore, regardless of how one characterizes the deficiency in Paulsen's offer, the contracting officer properly decided not to award the contract to the firm.

The evaluation formula was designed to allow the Corps to estimate the total cost to the government of accepting a given bid. Toward this end, the evaluation formula factored into each bid the cost of interest, liquidated damages, and overhead. In order to compute an evaluated cost total, the ratios or percentages representing these factors were multiplied by the bidder's total contract price, or the number of days in the proposed performance period, or both, as provided in the evaluation formula. The bidder's proposed construction schedule thus significantly affected all of the calculations, so that, as the Corps points out, the viability of any estimate of the total cost to the government depended upon submission of a practicable performance period by the bidder.

In view of the contracting officer's skepticism concerning the short performance period proposed by Paulsen, the Corps closely examined the 210-day figure to determine if it was realistic. The Corps compared Paulsen's proposed 210-day work schedule with the Corps' own estimate of 540 days and with the 463-day average time period proposed by all other bidders. Moreover, the Corps noted that the low-priced bidder, Layton, had proposed to complete construction in 450 days. Thus, the comparisons showed that Paulsen's proposed timetable was less than half as long as any of the standards that the Corps considered to be reasonable.

Next, the Corps examined a number of construction jobs that had already been completed at Hill Air Force Base during the last 5 years. The Corps noted that all of these contracts were priced significantly below the dollar value of the present contract (the price range was from \$2.2 million to \$7.4 million) and, yet, all took significantly longer than 210 days to complete (the performance periods ranged from 380 days to 794 days). The Corps also noted construction work on the original avionics facility, being performed by another contractor, will take approximately 690 days to complete; the present solicitation is for construction that will triple the size of the original facility.

Finally, the Corps estimated that, if Paulsen had submitted a more realistic figure, Paulsen's bid would have been evaluated as costing much more. The Corps even evaluated Paulsen's bid using the same 450-day period proposed by Layton and determined that Layton's bid represented a lower evaluated total cost than Paulsen's bid.

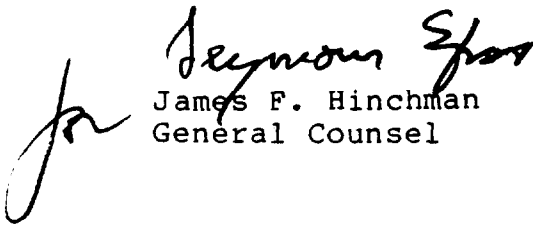
While we recognize that no two construction contracts are identical, we find the Corps' analysis to be persuasive. The pattern shows that virtually all construction work done at Hill Air Force Base over the last several years has taken much longer than the time proposed by Paulsen here, regardless of the fact that the contracts were all lower-priced. We also find compelling the evidence showing that Paulsen's estimate was less than half the average of all other bidders' estimates.

In sum, Paulsen did not comply with the IFB's direction that a "practicable" construction period be proposed. We think the Corps could have been more specific as to its expectations in this regard, especially in view of the agency's experiences. Nevertheless, the evaluation formula clearly was premised upon a realistic time period being offered and, in our view, the Corps properly determined that Paulsen's bid, based on 210 days, did not comply and thus did not, on its face, represent the lowest cost to the government. The agency further found that if Paulsen's bid was evaluated against what the competition and the Corps' knowledge and experience showed was a practicable timeframe, the bid was not low under the IFB's evaluation scheme. Paulsen had submitted the fifth-low bid price and the Corps reasonably decided that it did not want to pay an additional \$289,797 over Layton's lowest-priced bid merely because Paulsen had submitted an illusory construction schedule. We think the contracting officer's decision was prudent--we do not believe the Corps should be required to accept Paulsen's higher-priced bid where the Corps' reasonable analysis shows that Paulsen almost certainly will not be able to meet its

overly-optimistic projected timeframe. Accordingly, the protest is denied on this point.

Insofar as Paulsen alleges that Layton's bid should have been rejected as nonresponsive because Layton did not enter bid prices for all items in the bid schedule^{1/}, the protest is dismissed. Paulsen cannot be awarded this contract because it cannot be determined that its bid represents the lowest evaluated cost to the government, and as there are three other eligible bidders (excluding Layton) offering lower total prices than Paulsen, Paulsen is not an interested party for the purpose of challenging Layton's bid as nonresponsive. See 4 C.F.R. § 21.0(a) (1988).

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel

^{1/} Layton neglected to insert an extended price for the option item. However, Layton's extended price for this item is determined easily because Layton did insert a unit price. See Spectrum Communications, B-220805, Jan. 15, 1986, 86-1 CPD ¶ 49.